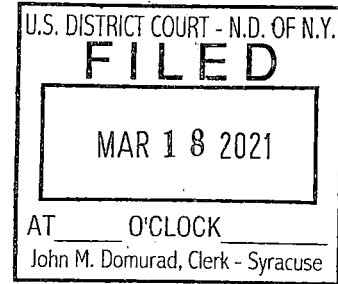


UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK



Sterling Stevens,

Plaintiff, *Pro se*,

Civil Rights Complaint
42 U.S.C. § 1983

-against-

Jury Demand

Yes ☒ No ☐

Andrew Cuomo, Governor, New York State
Anthony J. Annucci, Acting Commissioner, NYS
DOCCS
Jay Pay, Private Communications Provider for
Clinton Correctional Facility
Earl Bell, Superintendent, Clinton C.F.
T. Harrigan, Deputy Supt. Of Health Services

Defendants.

I. PARTIES

- A. **Name of plaintiff:** **Sterling Stevens**
Clinton Correctional Facility
P.O. Box 2001
Dannemora, New York 12929
Din. Number: **16A2565**
- B. **List all defendants:** You must provide the full names of each defendant and the addresses at which each defendant may be served. The defendants listed here must match the defendants named in the caption.

Defendant No. 1:

Andrew Cuomo

Full Name

Governor of the State of New York

Job Title

The Capital

Albany, New York, 12224

Address

Defendant No. 2:

Anthony J. Annucci

Full Name

Commissioner of DOCCS, Acting

Job Title

1220 Washington Avenue

Albany, New York 12226

Address

Defendant No. 3:

Jay Pay

Full Name

Private Communications Provider for C.C.F.

Job Title

Address

Defendant No. 4:

Earl Bell

Full Name

Superintendent, Clinton Correctional Facility

Job Title

P.O. Box 2001

Dannemora, New York 12929

Address

Defendant No. 5:

T. Harrigan

Full Name

Deputy Superintendent Health Services

Job Title

P.O. Box 2001

Dannemora, New York 12929

Address

II. STATEMENT OF CLAIM

Introduction:

1. Since the beginning of the pandemic, Governor Cuomo and/or Acting Commissioner Anthony Annucci issued several Statewide orders in an attempt to curb the spread of the Coronavirus inside of prisons. While these orders were claimed to be based on the latest science (i.e. social distancing, limiting contact between inmates and/or staff), they did not come with the necessary funding and/or manpower to adequately carry out the mandates contained in them.

2. For instance, they did not provide approval for the distribution of masks to the inmate population until May of 2020, even though the Facility's tailor shops were making these masks.

3.. They ordered social distancing, sanitation and preventative spread practices to be implemented in various areas in the facility, but they knowingly and repeatedly failed to provide the manpower and/or sufficient cleaning supplies to carry out these mandates. This was of particular concern in the Facility's bathhouse (where inmates stood two feet apart from each other), and the telephones in the Main Yard (where inmates stood 2 feet from each other, and the phones were not sanitized during the changing of groups in a particular recreation period). All of which can be verified by the attached Exhibits, the rejected requests of Clinton Correctional Administrative personnel for manpower, supplies and other items needed to carry out the Governor's and Acting Commissioner's mandates.

4. Governor Cuomo and Acting Commissioner Annucci failed to expand and/or properly utilize the recently installed J-Pay tablet system to increase family ties and community spread in the facility during the suspension of visitation. They did this by failing to approve the

expansion of the in-cell phone/kiosk program that is currently in use in Clinton's Special Housing Unit.¹

5. Then, going against the recommendation of the CDC, Governor Cuomo and Acting Commissioner Annucci opened up visitation that allowed visitors to come to Clinton C.F. from areas designated as "Red Zones", while the facility, and Clinton County, was classified as a "Yellow Zone".

6. Because these facts demonstrate that there is a direct correlation between:

- (a) the failure of Governor Cuomo and Acting Commissioner Annucci to provide the funding and manpower to carry out the science based prevention methods in their mandates and executive orders, and
- (b) the failure of Governor Cuomo and Acting Commissioner Annucci to expand the already existing secure Wi-Fi kiosk/phone system to the general population at Clinton Correctional Facility during the pandemic, and
- (c) the opening of visits in August of 2020, and
- (d) the recent spike in COVID-19 cases that came after the facility's visitation was opened . . .

. . . there is sufficient cause to find that such negligent and irresponsible actions of these officials resulted in me and others similarly situated inmates contracting COVID-19, and suffering from its devastating post-COVID-19 exposure symptoms. All of which could have been avoided if Governor Cuomo and Commissioner Annucci would have provided:

- A. Extra manpower to carry out their mandated preventions protocols, and
- B. Extra funding for cleaning supplies and PPE's for inmates and staff, and
- C. Approved the requested expansion of the already installed secure Wi-Fi system that would have allowed for secured telephone calls and other Tablet services to be conducted from an inmate's cell. And as an added bonus, provide both security and

¹ Judicial Notice must be taken of the fact that Upstate Correctional Facility has this system, and it supports the daily usage of about 1,200 plus inmates. Clinton only has 1,250 plus inmates, but by central office decree, only inmates in the Special Housing Unit and/or other disciplinary house units are allowed to use those services.

mental health benefits that no doubt would have prevented the uprising about the yard phones on July 11, 2020.

7. For the Governor and the Acting Commissioner to tout their accomplishments in these areas, while failing to provide the manpower, funding and alternative solutions that would have resulted in reduce exposure to the virus even after they reinstituted visitation, demonstrated a deliberate indifference to the well being and safety of the inmates and staff at Clinton Correctional Facility. As demonstrated below, this deliberate indifference not only lead to me and other inmates similarly situated needlessly contracting the Coronavirus, but after contracting the virus, we were subjected to inhuman conditions that penalized us for contracting the virus.

A. Governor Cuomo and Acting Commissioner Annucci Issues Mandates and Executives Orders Designed to Prevent the Spread of COVID-19, But Fails to Provide the Necessary Funding and Manpower For The Facility To Sufficiently Carry These Mandates Out

8. On March 5, 23020, Deputy Commissioner James A. O’Gorman -- at the direction of Governor Cuomo and Acting Commissioner Annucci -- issued some common sense steps to prevent the spread of the Coronavirus (see see Exhibit A, page 1).

9. Then, on March 14, 2020, Acting Commissioner Annucci suspended visitation at all correctional facilities (see Exhibit A, pages 2-3). To his credit, Commissioner Annucci recognized the importance of keeping in contact with family and friends by issuing each inmate: a) five free stamps per week, (b) 2 secure free stamps per week via electronic email, and (c) one free phone call per week (Exhibit A, page 2-3). The latter three services were tablet services provided by the private communications provider for the DOCCS, JPay Services.

10. These tablet services would be expanded from time to time throughout the pandemic (see e.g. Exhibit A, pages 14, 21, 23-24, 25-26, 30-31). However, both Governor Cuomo, Commissioner Annucci and JPay services failed to act on the most cost effective way to minimize community spread within Clinton Correctional Facility. That is, they, in conjunction with JPay Services, specifically rejected several proposals to expand the already existing secured Wi-Fi telephone and kiosk system in use in the Clinton’s Special Housing Units to the General Population

(Exhibit A, page 54's response to item 3). Something that was backed by the Facility and inmate Population, and is currently in use in several areas of the facility.²

11. Then, in March of 2020, Congregate Services were shut down, as well as special events (see Exhibit A, pages 4, 9-10). Again, showing Governor Cuomo's and Commissioner Annucci's consciousness of the need for social distancing amongst inmates in areas where inmates congregate.

12. Further evidence of their consciousness of the seriousness of the pandemic on inmates and staff, Commissioner Dr. Ann Marie T. Sullivan, and Executive Deputy Commissioner Christopher Tavella, Phd -- under the direction of Governor Cuomo -- issued anxiety reduction suggestions for dealing with the affects of the pandemic. These included, hygiene measures, PPE precautions, and other stress reduction recommendations (Exhibit A, pages 5-7) to compensate for psychological effect of social distancing. However, notwithstanding these recommendations, during this entire pandemic period, this Facility never received sufficient funding, cleaning supplies, PPEs and/or manpower for:

- A. The running of the bathhouse (see Exhibits B, C, D, E), which requires that inmates congregate within 2 feet of each other, and
- B. Cleaning of the yard phones between each usage during a given recreation period (see Exhibits B, C, D, E), and
- C. The running of the kiosk and its cleaning between each use (see Exhibits B, C, D, E), and
- D. Sanitizing the handrails and hallways for inmate movement (see Exhibits B, C, D, E).

13. In April of 2020, Commissioner Annucci issued a memorandum allowing Correctional Facility staff to wear mask during their work hours (Exhibit A, pages 11-12). However, there was no similar allowance for inmates. Instead, we had to wait until April 1, 2020 for permission to wear handkerchiefs across our face as a substitute for masks (Exhibit A, page 18).

² The secured Wi-Fi Communications system is installed in the Clinton's Special Housing Unit, while the Westlaw Wi-Fi system is installed in the Facility's D and E Blocks.

This was particularly ironic given the fact that inmates in the Corecraft ran tailor shops at Clinton C.F. were working 12 hour shifts making masks for the general public (Exhibit A, page 32), but we could not wear the mask that we were making.³ It would not be until May 6, 2020 that masks were finally donated to us (Exhibit A, page 22). And it was not until 07/29/20, that masks were deemed to be mandatory to wear throughout the facility for inmates and staff. But fortunately, up until this point there were no reported cases of COVID-19 at Clinton C.F. amongst staff or inmates. And more importantly, there were very few, if any, cases of COVID-19 reported from Clinton County's Department of Health.

14. Also in April of 2020, the Inmate Liaison Committee expressed its concerns with the potential affects of the spreading of the virus and how the facility anticipated to combat the spread of the virus should a lockdown occur. The facility responded that hand sanitizer stations have already been installed in the Messhall, at the yard door, and in the infirmary (Exhibit A, pages 15-16).

15. However, there was a lack of disinfectant supplies and manpower due to budget restrictions placed on the facility by Governor Cuomo and Commissioner Annucci. As a result, not only wasn't there any hand sanitizer stations installed in the blocks, but the facility was not able to consistently institute the daily disinfecting of the hallways, handrails throughout the facility, or the telephones during intra-yard runs (see Exhibits B, C, D, E and H).

16. Concerned about the lack of adequate precautions was voiced during a later ILC meeting when the inmate population asked for:

- A. The daily disinfecting of the hallways, handrails and walls, a,d
- B. The yard phones to be disinfected between before the morning and PM yard runs, and the EVE yard runs⁴, and

³ Although the facility houses Tailor shops, the running of those Tailor Shops are by Corecraft, and thus not under the control of the Superintendent or his executive team, making Corecraft's refusal to supply masks to the inmate population another extension of the constitutional infirmities I and other inmates suffered because of the deliberate indifference of Governor Cuomo and Commissioner Annucci.

⁴ It is conceded that between Eastside and Westside Main Yard sessions, the phones were sanitized. However, because of the for manpower and time constraints placed on the facility by Central office, the phones could not be disinfected between intra group use during a specific yard run.

- C. the normally discarded scrap material from the T-Shirts during the cut room process⁵ to be made into phone sleeves and given to inmates for use as a barrier for their hands while using the yard phones, and
- D. other disinfecting measures to be used in areas heavily shared amongst inmates (see Exhibit A, pages 57-58).

17. In reply to these requests, the Superintendant stated that the “facility [was] *taking all available precautions* to help prevent the spread of COVID-19” (see Exhibit A, page 57-58)(emphasis added). To me, this meant that the facility was doing all that it could do with the shortages in manpower, funding and supplies to effectuate Central Offices’ demands.

18. On May 28, 2020, Commissioner Annucci issued a Gradual Re-Opening Plan. Amongst his plans was the continued social distancing in the mess hall and congregate areas. Commissioner Annucci also laid out how the visiting process will be implemented (Exhibit A, page 27-29).

19. However, because he did not provide the manpower and/or cleaning supplies to achieve social distancing by the phones⁶ or in the bathhouse⁷, this memo had very little practical effect in the facility. Moreover, he said nothing about utilizing the most effective means of controlling congregate gatherings. And that was the expansion of the already installed secure Wi-Fi

⁵ This request had to be shuttled through Central Office and Core craft, which never responded to the request for this request for PPEs

⁶ Inmates at Clinton make their phone calls in the yard. There are 70 phones in the yard, spaced at about 2 feet apart. While the phones are sanitized between each rec period, they are not sanitized during the rec periods. Meaning, once one group of 65 to 70 inmates complete their calls and are escorted out of the fenced in phone area, the next group of 65-70 inmates are escorted in without the telephones being disinfected between this intra group uses. Again, this was due to the failure of Albany to provide adequate manpower, and their imposition of time restraints upon the facility for completion of yards runs.

⁷ The bathhouse consists of 92 showerheads. Between 25 and 50 inmates are brought up to the bathhouse to take their showers. This translates into at least 4-5 trips to the bathhouse to complete the showers for one block. However, the showerheads are less than two feet apart. Because it takes at least 3 hours to shower an entire block, inmates are forced to take showers right next to each other, without a mask, having to endure each other’s discarded wastewater (see Exhibit H). A problem made more severe by a backed-up sewage system that causes pools of water to accumulate over out shower shoes while we take a shower (id.).

system for general population use of in cell communications with loved ones (see Exhibit A, pages 36-44).

B. Governor Cuomo And Commissioner Annucci Are Made Aware That Re-Opening Of Visitation Would Result In COVID-19 Infections In Clinton Correctional Facility And Clinton County

20. On July 29, 2020, Commissioner Annucci set forth his visiting room reopening plan for this and other facilities in the State (Exhibit A, pages 33-34). Interestingly, he recognized the need to not allow visitors in the facility that come from States who have high rates of infection, and who had not completed the necessary 14 day quarantine periods. However, he allowed visitors from within New York State who came from Red and Orange zones with high rates of infection without such quarantine restrictions (compare Exhibit A, pages 33-34 with Exhibit A, page 56).

21. Recognizing this defect, on August 11, 2020, an inmate here at Clinton Correctional Facility wrote to Governor Cuomo (Exhibit A, pages 36-44), Acting Commissioner Annucci, and the Superintendent of this facility (Exhibit A, pages 45-53). As an over 50 African American Male (like myself), he was concerned that opening up visitation would:

- A. Contaminate the double bubble of protection that Clinton Correctional Facility, and indeed, Clinton County was enjoying from March of 2020 when the facility was first closed down, until August 11, 2020, the date of the letter (see Exhibit A, pages 2-3), and
- B. Expose a vulnerable class of inmates to a high risk of not only contracting COVID-19 due to visitation from areas they would later designate as red zones⁸, but due to our advanced ages and preexisting health conditions, the aforementioned portion of the population would be hospitalized if we were to contract COVID-19.

22. Interestingly enough, the majority of the inmates who were hospitalized were individuals who were over 50 (see e.g. Exhibits B and C)

⁸ See Exhibit A, page 56

C. Governor Cuomo, Commissioner Annucci and the Executives at JayPay, Reject the Numerous Request to Expand the Already Installed Secure Wi-Fi Tablet System to Allow for Video Visitation, and Phone Calls from An Inmate's Cell.

23. In that same August 11, 2020 letter, Governor Cuomo and Commissioner Annucci were provided with a reasonable alternative to visitation, or a sufficient means of harm reduction should visitation be implemented. And that was to allow inmates to visit with their families through the already existing JPay Tablet system, and/or allow inmates to have telephone calls with their families by expanding the already installed secure Wi-Fi phone system (see Exhibit A, pages 36-44; also see, Exhibit A, pages 45-53).

24. This would have drastically reduced the number of inmates who shared the yard phones. The chief culprit in the spread of the virus here at Clinton correctional facility (see e.g. Exhibit B, C, D, E and H). The letter even informed the governor that the inmate population here at Clinton would pay for the Wi-Fi system (Exhibit A, pages 41-42; also see Exhibit A, pages 50-51).

25. Also, it was later learned that the Administration here at Clinton Correctional Facility had previously requested the upgrade of the Kiosks and Wi-Fi system (i.e. phone calls, emails, movies, music, etc.) but that "central Office" denied it (Exhibit A, page 58's item 3).

D. The Direct Correlation Between The Massive Outbreak Of The Coronavirus And The Unsound Directives From Central Office Regarding The Opening Of Visitation

26. Normally, it would be hard to show a correlation between the Coronavirus outbreak here at Clinton Correctional Facility, and the ill-advised decision of Governor Cuomo and Commissioner Annucci to open up visitation. But fortunately for this complaint, there is sufficient correlative data that makes such a finding a foregone conclusion.

27. For instance, the facts show that right before the reopening of visitation, Central office ordered testing of the entire inmate population. According to early reports, there was no positive cases of Coronavirus in the Facility. This meant that even though programming was running during the period of March to August 2020, and even though there was no social distancing

in the yard or bathhouse during this same period, there was not a single case of COVID-19 reported during this period. A fact confirmed by the nearly 100% negativity rate that resulted from the test. This, as correctly stated in the letter to the Governor, was due to the double bubble that we enjoyed being in Clinton Correctional Facility (which had zero exposure), and in Clinton County (which had less than 0.001 percent infection rate (see Exhibit A, pages 37-40).

28. However, within 5-6 weeks after opening visitation, the number of positive cases began to increase. First, Lower H Block was shut down because 11 of its inmates contracted COVID-19. Contact tracing linked the majority of their exposures to contacts they received from the visiting room.

29. Then, Upper H block was shut down due to several positive cases. Then, the virus began to spread like wild fire in the facility. There seemed to be a direct link between the increase in positive cases and the opening of visitation. This is derived from the fact that prior to visitation, for nearly six months, not a single case of Coronavirus was reported in the facility or amongst staff. However, after visitation was opened, cases began to appear amongst inmates, staff, and later, even to the civilian population in Clinton County. Exactly what was warned of in the open letter to Governor Cuomo (see Exhibit A, pages 39-40; also see Exhibit A, pages 47-48).

30. By the time the facility was closed down by Albany on December 16, 2020, over 200 inmates had contracted COVID-19. Interestingly, during this same Period, the Clinton County Department of Health had reported similar spikes in their positive cases amongst residents of Clinton County. TYhis is because Staff at Clinton Correctional Facility had family and friends in Clinton County, and they brought the virus home from work. So, it can be said that there was also a link between the opening of visitation and the sudden rise in Coronavirus cases in Clinton County. Again, something that Governor Cuomo and Commissioner Annucci was warned about if they opened up visitation.

E. The Daily Superspreader Events in the Main Yard, My Coronavirus Infection, and my Degrading Treatment in Isolation

31. After being saturated with information about the Coronavirus, I recognized that I had to take extra precautions because of my pre-existing health conditions (i.e. diabetes, hypertension, high cholesterol, arthritis, etc.).⁹ I was hyper-vigilant in following all of the do's and don'ts to protect myself from contracting the virus.

32. I did not go to recreation except one day every other week to talk to my family. This was largely due to the large crowds that gathered around the phones in the yard.

33. I always wore a mask when I was out of my cell.

34. I did not go to the messhall, but instead relied on purchases from the commissary and packages from home for my nutritional needs.

35. Even though I did not have any neighbors to the right or the left of me for nearly two months, I still constantly wiped down my bars, washed my hands, and kept my cell clean.

36. I left my cell only to go to the law library, where unlike other areas of the facility (i.e. the bathhouse, the main yard, the hallways, etc), social distancing was strictly enforced.

37. But after each block began to be closed down because of COVID-19 infections and the resulting quarantines, I went to the Yard to use the phone. A few days later, I notice that I started to not feel well. I had a fever. I had nausea and diarrhea. Concerned for my health, I reported these conditions to medical personnel on January 19, 2021, during a routine blood work appointment. My results? Positive for COVID-19.¹⁰

⁹ These conditions were implicitly recognized by the State as being high risk because on February 10, 2021, I was one of the first inmates (with serious health issues) who was allowed to get the COVID-19 vaccine (see Exhibit B and G).

¹⁰ The designated area for asymptomatic inmates to be housed was Building 23. This area had its own set of problems, including the use of one sink for 13 inmates. No proper ventilation. And other unsafe conditions that seemingly penalized inmates for having COVID-19 (see Exhibits C, D, and E)

38. Because I was symptomatic I was placed in the facility's hospital for 14 days. Initially, I was placed in a one man isolation room for three days. Then when my symptoms somewhat abated, I was placed in a four man dorm for the remaining 10 days.

39. Although the hospital's recreation areas was specifically designed to provide recreation and telephone services to all inmates who were placed in the hospital, the hospital staff did not allow us to use this Recreation center because of the hospital staff's fear of contracting the virus from one of us (see Exhibits B and C, and D).

40. But that's not all. Hospital staff would not take our mail. Hospital staff attempted to slip our medications under the door so that they would not have contact with us. Hospital staff would not allow us to use the kiosk set up in the hospital recreation area. Even though I had not caused any disciplinary infractions, I was being treated worse than an inmate who was housed due to disciplinary sanctions.

41. I am still psychologically affected by being quarantined in hospital room for (14) days, without being able to come out to the designated recreation area for the four man dorm. I felt less than a man.

42. But again, that's not all. The inmate porters were not allowed to come into the rooms to sanitize them, nor were we provided with instructions nor/sufficient supplies to clean our own Dorm (see Exhibit B). I was filled with anxiety, and actually loss 36 lbss while in Isolation. A combination of stress and physical ailments brought on by the virus.

43. The shortages of supplies and manpower, the failure of Governor Cuomo, Commissioner Annucci and JPay services to expand the already existing secure Wi-Fi system to reduce the superspreader events that occurred daily in the main yard, and the illadvised opening of visits from Hot spots within the state was, s the direct cause of me contracting the Coronavirus.

44. As for my future concerns, there is the fear of the unknown. The makes of the Moderna vaccine advises that the vaccine does not cure the Coronavirus (see Exhibit G). Moreover, the Moderna vaccine has not been shown to be effective against the new strains of the Coronavirus that is fast spreading throughout New York State.

IV. INJURIES

45. Because of the negligence and/or deliberate indifference of Governor Cuomo, Acting Commissioner Annucci, and JPay Communication Services, I was forced to go outside to make my phone calls in an area that the Governor and Commissioner knew were breeding grounds for the spread COVID-19. As a result, I contracted COVID-19.

46. During my isolation in the facility hospital, I was subjected to degrading and humiliating treatment that went as far as hospital personnel placing my medications on the floor in order to not come into contact with me. They would not even take my mail.

47. I still suffer from headaches to this day. I am constantly tired. I constantly have shortness of breath. And I suffer from enhanced anxiety because of fear of the unknowns associated with this virus.

48. While I was in isolation, a package came for me, and was sent back at my own expense because I could not have its contents while I was in Quarantine.

IV. CAUSES OF ACTION

A. First Cause of Action: Eighth Amendment Violation:

49. As a first cause of action, I here reassert and re-allege the facts contained in Paragraphs 01-48, and further claim that Governor Cuomo and Acting Commissioner Annucci, acting under the color of state law, and in their personal and official capacities, violated my Eighth

Amendment Rights. This violation occurred when said officials imposed COVID-19 preventative measures on Clinton Correctional Facility's staff, but thereafter failed to provide the appropriate manpower, funding and common sense upgrades that would have allowed for adequate social distancing in the main yard.

50. Also, they violated my Eighth Amendment rights by failing to expanding the already existing secure Wi-Fi system to allow general population inmates to stay in contact with their loved ones from the confines of their cell (like inmates in disciplinary housing), Governor Cuomo and Commissioner Annucci withheld a powerful Isolation method that would have dramatically reduced the number of inmates in the Main Yard.¹¹

51. Here, the objective component of my Eighth Amendment claim has been satisfied because I actually contracted the Coronavirus after Governor Cuomo and Commissioner Annucci reinstituted visitation. I also satisfy the subjective component of my Eighth Amendment claim because the evidence shows that Governor Cuomo and Commissioner Annucci knew about the dangers of opening up visitation to individuals from hot zones (see Exhibit A, pages 39-40), but ignored the consequences of such visits.

52. This was a crucial error on their part. When visitors arrived, they were allowed to hug at the beginning and end of the visits. When they ate, they were allowed to take off their mask and sit between four and six feet from the inmate they were visiting. And most importantly, they handled the food and gave it to the inmate so that he could eat. This created a host of issues that made the visiting room the point of first contact.¹²

53. Put simply, there was no way for the Facility to ensure social distancing while allowing 350 inmates to use the phone in 2 hours. This was a prime breeding ground for the spread of the Coronavirus that could have been avoided had the Governor and Commissioner followed the

¹¹ Inmates have to line up in groups to make phone calls in the main yard, where it is impossible to maintain social distancing.

¹² Those inmates, fresh off of the visit, then went to the Main yard to use the phone. They stood in the throongs of inmates trying to get on the phone, coughing, laughing, and talking loud about the vists they just was on. I ask the Court to order a copy of the archival videos of the daily recreation periods from March of 2020, until present, which will confirm that this is in fact what happened.

common sense suggestions of their subordinates to have the already installed secure Wi-Fi system expanded at Clinton Correctional Facility to include general population inmates.

54. Finally, because I was not able to leave the facility, and I did not have the choice with whom I can associate, or how closely I walk next to another inmate while I am on the line for the phone, or even when to move from an inmate who has just coughed while on the phone, Governor Cuomo and Commissioner Annucci's order to open up visitation, when coupled with their failure to provide for the appropriate manpower and funding to help the prevention of the disease, was an act of deliberate indifference sufficient to sustain the Eighth Amendment claims here being advanced.

B. Second Cause of Action: Fourteenth Amendment Violations

55. As a Second cause of action, I here reassert and re-allege the facts contained in Paragraphs 01-54, and further claim that Governor Cuomo, and Acting Commissioner Annucci, acting under the color of state law, and in their personal and official capacities, violated my Due Process rights when they imposed COVID-19 preventative measures on Clinton Correctional Facility, but failed to provide the necessary funding and manpower to decrease my and other inmates exposure to the Coronavirus.

56. in light of their knowledge that more manpower and funding was needed to prevent the spread of COVID-19 at Clinton Correctional Facility, and in light of their knowledge that the best way to ensure adequate social distancing by the yard phones was by expanding the already existing secure Wi-Fi system, it can faithfully be said that there exists a triable issue of fact as to whether Governor Cuomo and Commissioner Annucci failure to act with reasonable care to mitigate the risk that increase exposure to a population of visitors from Hot zones constituted a Due Process violation.

C. Third Cause of Action: Eighth And Fourteenth Amendment Violations.

57. As a Third cause of action I here reassert and re-allege the facts contained in Paragraphs 01-56, and further claim that JPay Services, in their personal and official capacities,

violated my rights to Due Process, Equal Protection and to be free from cruel and inhumane punishment when they failed to expand their already existing secure Wi-Fi system to include general population inmates.

58. JPay services is a private company that is the exclusive provider of the Tablet and Phone systems at Clinton Correctional Facility. Specifically, they own all of the equipment that facilitates the tablet services, which include the access to secured Wi-Fi services to inmates who are on disciplinary confinement. Because the State contracted JPay to perform a duty that was traditionally the domain of the State, JPay services can be sued under Section 1983 because in the middle of the pandemic, they failed to expand their already existing services to allow for in cell communications for the entire population.

59. Here, JPay knew of the need of maintaining contact with family members, and in fact, instituted special services to ensure this end (see Exhibit A, pages 14, 21, 23-24, 25-26, 30-31). But, in order to take advantage of the free phone services, inmates had to go to the yard and gather by the phone. A circumstance that made social distancing impossible.

60. The fact is that once JPay installed the Kiosk in late 2019, they already had the infrastructure to institute video visiting capabilities, and to expand the already installed secure Wi-Fi system that is being enjoyed by inmates sitting in disciplinary confinement. However, by refusing to install the system after being asked to do so (see Exhibit A, page 58), while recognizing the need for social distancing, JPay is equally liable for the 8th and 14th Amendment violations articulated above.

D. Fourth Cause of Action: Eighth and 14th Amendment Violations

61. As a Fourth cause of action I here reassert and re-allege the facts contained in Paragraphs 1-60, and further claim that Superintendent Bell and Deputy Superintendent of Health Services, T. Harrigan violated my Eighth and 14th Amendment rights by subjecting me to conditions during my stay in the facility Medical unit that was akin to punishment (see Exhibit B; also see Exhibits C, D and E). There was a facility policy that would not allow an inmate to use the isolation

day room where the Kiosk was located. This meant I could not get messages to my family via the JPay system. This policy existed because prison officials feared that we would spread the virus.

62. But this rationale was illogical. The hospital recreation room was specifically designed to handle inmates with infectious diseases, yet we could not use it because we were positive for COVID-19. The irony in this was that no such concern was launched in the main yard, where social distancing was not practiced in the areas of the phones.

63. Under such circumstances, the Administration's failure to properly act violated my Eighth and 14th Amendment rights.

V. RELIEF REQUESTED

64. I am seeking \$10,000 in both compensatory and punitive damages against Governor Cuomo and Commissioner Annucci for their failure to provide the appropriate manpower and funding to carry out their imposed Coronavirus Prevention mandates.

65. I am seeking \$10,000 in both compensatory and punitive damages against Governor Cuomo, Commissioner Annucci and JPay Services for their failure to expand the already existing Secure Wi-Fi tablet system to the general confinement population. A move that would have allowed me and other vulnerable inmates to stay in our cells to contact my family, conduct programming, and stay away from the Main yard's inability to provide for social distancing.

66. I am seeking \$10,000 in both compensatory and punitive damages against Superintendent Bell, and Deputy Superintendent Harrigan for their failure to maintain the appropriate recreation services while I was housed under the facility's quarantine/isolation protocols.


67. I am seeking an order directing the Department of Corrections and JPay services to expand the already existing secure Wi-Fi services to allow for general population inmates, like their counterparts in the disciplinary housing units, to use their tablets as telephones during selected hours

that would give an inmate a choice of either going out to the yard to use the phone for 15 minutes, or staying in their cell to use the phone for 2 hours. This not only will reduce the amount of inmates in the yard, but it would be an added security boon for the facility. This injunctive relief is necessary because there is still the unknown regarding the various strains of the Coronavirus for which none of the existing vaccines have been shown to be effective.

68. I am seeking an order allowing for class certification and the assignment of counsel to help me with this matter. My lack of legal training, the size of the class, the complexities of the legal issues, and my inability to properly navigate the complex discovery requirements of getting the video/audio tapes of the yard showing no social distancing in the phone area, obtaining the communications between facility staff and Central office requesting additional funding and staffing to carry out social distancing protocols, and the emails demonstrating the Governor and Commissioner's refusal to expand the existing wi-fi system, requires the hands of a trained professional.

69. I declare under penalty of perjury that on March 15, 2021, I delivered this complaint to prison authorities at Clinton Correctional Facility to be mailed to the United States District Court for the Northern District of New York.

Dated March 15, 2021


Sterling Stevens
Din. No: 16A2565

~~Sworn to before me this
__ day of March, 2021~~

No Notary Available